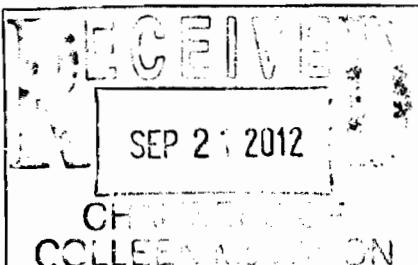


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The New York Times  
Company



David McCraw  
Vice President and  
Assistant General Counsel

620 8<sup>th</sup> Avenue  
New York, NY 10018

tel 212.556-4031  
fax 212.556-4834

September 21, 2012

**MEMO ENDORSED**

**VIA FACSIMILE**

The Honorable Colleen McMahon  
United States District Court  
Southern District of New York  
500 Pearl Street, Room 1350  
New York, NY 10007

Re: New York Times v. U.S. Dept. of Justice (11 Civ. 9336 (CM))

Dear Judge McMahon:

I write on behalf of both Plaintiffs and Defendant in the above-referenced action to call the Court's attention to the Second Circuit's decision this week in *Brennan Center for Justice v. U.S. Department of Justice* (Docket No. 11-4599, decided September 19, 2012). The District Court's decision in *Brennan* was discussed substantively by both sides in their summary judgment memoranda of law. *Brennan* deals with Exemption 5 of the Freedom of Information Act and the doctrine of express adoption and incorporation by reference.

Given the Second Circuit's detailed discussion of the applicable law, Plaintiffs and Defendant respectfully ask for permission to submit on or before October 1, 2012 three-page letters discussing the significance of the new decision for the pending summary judgment motions.

Respectfully submitted,

David McCraw

cc: Sarah S. Normand, AUSA (by email)  
Eric A. O. Ruzicka, Esq. (by email)